

**BEFORE THE STATE WATER CONTROL BOARD**

Fauquier County Water and Sanitation     )  
Authority,     )  
    Petitioner.     )  
   )  
In re: Water Quality Management     )  
Planning Regulation, 9VAC25-720-70.C.     )  
\_\_\_\_\_ )

**SB 1022 / HB 2074 PETITION TO EXTEND CTO DEADLINE FOR THE  
REMINGTON WASTEWATER TREATMENT PLANT**

Pursuant to Senate Bill 1022 approved March 30, 2009 (2009 Acts of Assembly Chapter 704) and House Bill 2074 approved March 27, 2009 (2009 Acts of Assembly Chapter 361), the Fauquier County Water and Sanitation Authority ("FCWSA") hereby petitions the State Water Control Board ("SWCB" or "Board") to extend the current deadline under the Water Quality Management Planning ("WQMP") Regulation at 9VAC25-720-70.C., Note (3), by which a certificate to operate ("CTO") must be obtained for the Remington Wastewater Treatment Plant (the "Remington Plant") at the higher design flow of 2.5 million gallons per day ("MGD"). FCWSA respectfully requests an extension in accordance with the legislation through December 31, 2015. In accordance with Virginia Code § 2.2-4007 and 9VAC25-11-60, FCWSA respectfully submits the following information in support of this petition.

**I. PETITIONER'S NAME AND CONTACT INFORMATION**

Fauquier County Water and Sanitation Authority  
7172 Kennedy Road  
Vint Hill Farms  
Warrenton, Virginia 20187-3907

Attention: Barney E. Durrett, Jr., General Manager  
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Phone: (540) 349-2092

## **II. SUBSTANCE AND PURPOSE OF THE REQUESTED RULEMAKING**

FCWSA is a public body created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* FCWSA's mission is to provide essential water and wastewater utility services to its customers at the lowest practicable rates, consistent with Fauquier County's Comprehensive Plan and with all applicable federal and state legal requirements. The Authority owns and operates three municipal wastewater treatment plants, including the Remington Plant.

FCWSA has been issued a CTO for a design capacity of 2.0 MGD and has made a major capital investment in expanding the Remington Plant to 2.5 MGD. Under the WQMP Regulation, in subsection 9VAC25-720-70.C. regarding nutrient wasteload allocations for Rappahannock River Basin, the Remington Plant has been assigned allocations for the 2.5 MGD facility for Total Nitrogen in the amount of 30,456 pounds per year (lbs/yr) and Total Phosphorus in the amount of 2,284 lbs/yr. These allocations are subject to footnote (3), which provides that "[i]f plant is not certified to operate at 2.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 24,364 lbs/yr; TP = 1,827 lbs/yr, based on a design flow capacity of 2.0 MGD."

FCWSA is petitioning the SWCB pursuant to SB 1022 and HB 2074 to obtain a five-year extension beyond December 31, 2010 to December 31, 2015 to complete the expansion of the Remington Plant without loss of the associated nutrient allocations, for the reasons stated below. Upon approval of this petition, footnote (3) to the nutrient allocation table in 9VAC25-720-70.C. (Rappahannock River Basin nutrient allocations), would be amended to extend the CTO deadline by five (5) years from December 31, 2010 to December 31, 2015, as follows:

(3) Fauquier Co. W&SA-Remington STP: waste load allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If

plant is not certified to operate at 2.5 MGD design flow capacity by December 31, ~~2010~~2015, the WLAs will decrease to TN = 24,364 lbs/yr; TP = 1,827 lbs/yr, based on a design flow capacity of 2.0 MGD.

**A. FCWSA's Facility Expansions were the "Poster Child" for HB 2074 and SB 1022**

SB 1022 was introduced by Senator Hanger, chairman of the Rappahannock River Basin Commission (the "Commission"). HB 2074 was introduced by Delegate Scott, also a member of the Commission. To the best of FCWSA's knowledge, the impetus for both bills developed from discussions within the Commission about the challenges with completing plant expansions in the adverse economic climate and the critical need to provide sufficient treatment capacity for denser, smart growth-type development in state-mandated Urban Development Areas. Furthermore, during the course of this discussion, the Fauquier County plants were the prime examples. To the best of FCWSA's knowledge based on the personal observations of legal counsel during the 2009 House and Senate committee hearings and related legislative negotiations, the same issues and examples were the drivers for the legislation. Accordingly, FCWSA respectfully submits that the current petition process was intended to address and resolve the needs of FCWSA's plants subject to the limitation no CTO deadline extension exceed five (5) years and the additional requirement that compliance with the underlying nutrient allocations would be required either end-of-pipe or by trading if necessary.

**B. A Major Public Investment Has Been Made in 2.5 MGD Capacity at the Remington Plant**

In 2005, the allocations for the Remington Plant were based on 2.5 MGD because FCWSA had already made substantial capital investments and "in the ground" improvements to increase the capacity to 2.5 MGD. At the time, FCWSA estimated that approximately 90% of the infrastructure necessary to operate at the 2.5 MGD tier has already been constructed at a

substantial cost, including all of the following units with capacity equal to or greater than 2.5 MGD:

- Head works
- Schreiber units
- Clarifiers
- Sludge processing equipment
- Pump stations

The value of this existing infrastructure was estimated at \$7,400,000 (1994 dollars). The value in 2009 dollars would be substantially higher.

Furthermore, the improvements necessary for a CTO rating at the 2.5 MGD flow tier (exclusive of the low-level nutrient control technology discussed below) were relatively minor: (1) additional blowers at the Schreiber units for aeration, (2) additional UV banks for disinfection, (3) related pads and tankage for this equipment, and (4) certain piping for peak flows. Total cost of these improvements is estimated in the range of \$2,000,000.

In light of the existing public investment, the Remington WWTP was assigned corresponding nutrient allocations also based on 2.5 MGD, as described in a memorandum dated September 11, 2005, from Ellen Gilinsky, PhD, Director, DEQ Water Quality Programs, to State Water Control Board Members. FCWSA respectfully submits that – consistent with the intent of SB 1022 and HB 2074 – this investment should continue to be recognized and preserved by means of the requested extension.

It should be noted that this public investment was made *before* the SWCB's development and adoption of the nutrient allocations. Therefore, this investment clearly was not made for the purpose of acquiring additional nutrient allocation and should not be subject to the same concerns that have arisen with other, more recently-initiated expansions and corresponding nutrient allocation requests.

**C. Temporary Deferral of the Remington Plant Expansion Is Consistent with State Policy and Priorities for State WQIF Grant Funding**

Over the past few years, both the General Assembly and the Administration have urged efficient use of the currently limited Water Quality Improvement Fund (“WQIF”) resources for paying the State’s share of point source nutrient removal technology (“NRT”) upgrades and have adopted policies or expressed preferences in this regard. A notable example is Enactment Clause 2 of House Bill 1710 and Senate Bill 771 (2007), the bills which authorize a bond issuance and use of the proceeds to pay a portion of NRT upgrades. Enactment Clause 2 states:

That the Department of Environmental Quality shall identify and evaluate options to ensure the efficient use of any grants authorized by the Water Quality Improvement Act (§ 10.1-2117 et seq. of the Code of Virginia). Any grant issued after October 1, 2007, shall include policies and guidelines governing the use of such grants that include the enforcement of appropriate cost control measures for the use of the grants....

A facility expansion generally must include the installation of “state-of-the-art” NRT, and installation of state-of-the-art NRT at Remington Plant as a major component of the expansion to 2.5 MGD would be eligible for State WQIF grant funding. FCWSA believes that approval of this petition would be consistent with and would further the State’s established policy of efficiently using the appropriated WQIF funds. To achieve compliance with Watershed General Permit and in particular the nutrient WLAs applicable to the Remington Plant in a timely and cost-effective manner, FCWSA has recently initiated construction on an NRT retrofit project (4.0 mg/l TN and 0.3 mg/l TP) for the existing design capacity of 2.0 MGD. For this project, FCWSA and DEQ have entered into a WQIF Grant Agreement under which the State has committed \$3.4 million to this \$6 million project, which includes:

- Deep bed denitrification filters
- Filter influent pump station
- Methanol storage and feed facilities
- Aerobic digester modifications

- On-line nutrient analyzer instrumentation
- Existing aeration blowers overhaul

If, however, the Remington Plant were completed now to 2.5 MGD design capacity including the same required NRT level of 4.0 mg/l TN and 0.3 mg/l TP, both the overall project cost (estimated at \$12.56 million) and the State share under the WQIF Program (estimated at \$6.71 million) would be far greater. The key point here is that FCWSA's approach is wholly consistent with the overriding legislative mandate to take reasonable steps to minimize costs and FCWSA's compliance with this legislative policy should be recognized and supported by approval of this petition.

In addition, based on information and experience, FCWSA believes that DEQ would be unlikely to enter into a WQIF Grant Agreement at this time for the 2.5 MGD project due to similar considerations and the DEQ-projected shortfall in WQIF grant funding statewide. That would result in inconsistency and tension in that the regulatory program (nutrient WLAs and associated CTO deadlines) would drive the far more expensive project to complete the 2.5 MGD expansion at this time, whereas the WQIF funding program would work to defer funding at this time. Obviously construction and funding must go hand-in-hand, and granting this petition would help align these in a logical manner.

#### **D. The Remington Expansion Is Needed in Part to Remedy the Privately-Owned Failed Drain Fields in Catlett and Calverton**

For many years, FCWSA has been working in coordination with Fauquier County leaders and DEQ staff toward the goal of remedying the failed septic systems in the villages of Catlett and Calverton. As of 2005, at least 102 septic systems had been identified as having failed and it was anticipated that another 100 would fail in the near future. Based on an average of each system handling 300 gallons per day, approximately 11.2 million gallons per year of

inadequately treated wastewater would be addressed if an affordable solution could be implemented. At this time, the only potential solution for addressing the failed systems in these areas is to construct a sewer line and convey the wastewater from the two villages to the Remington Plant. This project is roughly estimated to be in excess of \$6.7 million and would only be feasible with the connection of additional users along the route and the collection and use of related fees and charges. Granting this petition would allow Fauquier County a period of time to continue working to solve this difficult and expensive problem.

### **III. LEGAL AUTHORITY**

Proper legal authority exists for this petition under Senate Bill 1022 approved March 30, 2009 (2009 Acts of Assembly Chapter 704); House Bill 2074 approved March 27, 2009 (2009 Acts of Assembly Chapter 361); the Administrative Process Act, specifically Va. Code § 2.2-4007 regarding petitions for amended regulations; and the SWCB's Public Participation Guidelines, specifically section 9VAC25-11-60 regarding petitions for rulemaking.

### **IV. SUPPORTING DOCUMENT (ATTACHED AS EXHIBIT)**

DEQ-FCWSA WQIF Grant Agreement #440-S-09-14

### **V. CONCLUSION**

For the foregoing reasons, FCWSA's petition should be granted and the deadline for FCWSA to obtain a CTO for the expansion of the Remington Plant's capacity to 2.5 MGD should be extended by five years to December 31, 2015.

Respectfully submitted,



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Barney E. Durrett, Jr.

Date: July 8, 2009